

TITLE 14. Fish and Game Commission
Notice of Proposed Emergency Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, and 2084, of the Fish and Game Code (FGC) and to implement, interpret or make specific said sections of said Code, proposes to add Section 749.3, Title 14, California Code of Regulations (CCR), relating to incidental take of longfin smelt during candidacy.

Informative Digest/Policy Statement Overview

FGC Section 2070 requires the Commission to establish a list of endangered species and a list of threatened species. FGC Section 2074.2 provides that, if the Commission finds that the petition provides sufficient information to indicate that the petitioned action may be warranted, the petition is accepted for consideration and the species that is the subject of the petition becomes a "candidate species" under CESA. CESA prohibits unauthorized take of a candidate species, just as it prohibits such take of threatened and endangered species, from the time the Commission notifies interested parties and the general public of its acceptance of the petition.

FGC Section 2085 provides that once the Commission gives notice pursuant to FGC Section 2074.4 that it has designated a species a candidate under CESA, all activities, whether new or ongoing, that cause incidental take of the candidate species are in violation of the prohibition on unauthorized take of listed or candidate species found in FGC Section 2080 unless the take is authorized in regulations adopted by the Commission pursuant to FGC Section 2084 or the Department of Fish and Game (Department) authorizes the take through the issuance of an incidental take permit under FGC Section 2081 or by other means authorized by the California Endangered Species Act (CESA).

CCR Section 749.3 would authorize and provide for take of longfin smelt during its candidacy subject to certain terms and conditions. The objective of these regulations is to allow specified activities to continue on an interim basis, subject to the measures in the regulations designed to protect longfin smelt, while the Department focuses its efforts on further evaluating the status of the species. The status report provides the basis for the Department's recommendation to the Commission before the Commission takes final action on the petition and decides whether the petitioned action may or may not be warranted.

The regulations as proposed in ~~strikeout~~-underline format are attached to this notice. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Section 240 Finding

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Public Comments on Proposed Emergency Regulations

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to fgc@fgc.ca.gov. Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website (www.oal.ca.gov) to determine the date on which the regulations are filed with OAL.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

This proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations will allow continued scientific research and monitoring; dredging, gravel and sand extraction; and deliveries of water for agricultural municipal, industrial, and residential use during the longfin smelt candidacy, subject to specified terms and conditions. This proposed regulation will prevent potentially significant local and statewide adverse impacts that might result from the disruption of water deliveries and other activities.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulations will provide cost savings to the state in an undermined amount.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

The proposed regulations will provide cost savings to local agencies in an undermined amount.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: February 7, 2008

John Carlson, Jr.
Executive Director